

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOSE GUADALUPE LARA,	)	
	)	
Movant,	)	
	)	
VS.	)	Civil Action No: SA-10-CA-587-XR
	)	(Criminal Action No.: SA-08-CR-890-XR-3)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

On this date, the Court considered the United State Magistrate Judge's Report and Recommendation, filed August 5, 2010 (Docket Entry No. 198), in the above-numbered and styled case. After due consideration, the Court will accept the Magistrate Judge's recommendation.

Any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file his written objections within ten days after being served with a copy of the findings and recommendations. 28 U.S.C. § 636(b)(1). The Magistrate Judge's recommendation was sent by certified mail on August 30, 2010 (Docket Entry No. 203) and was received on September 7, 2010 (Docket Entry No. 206). No objections have been filed. Because no party has objected to the Magistrate Judge's Memorandum and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.").


Jose Guadalupe Lara filed a motion to vacate sentence pursuant to 28 U.S.C. § 2255, challenging his conviction and sentence for drug trafficking on four grounds: (1) that he received ineffective assistance of counsel, (2) that his guilty plea was involuntary, (3) that he should have been sentenced as a minor participant in the conspiracy, and (4) that his sentence was excessive. The Magistrate Judge concluded that Lara's claims that he should have been sentenced as a minor participant in the conspiracy and that his

sentence was excessive were barred by his plea agreement, in which waived any right to contest his sentence in any post-conviction proceeding except for claims of ineffective assistance of counsel and prosecutorial misconduct. The Magistrate Judge also concluded that Lara's claims that his guilty plea was involuntary, and that it was based on a promise by his attorney which amounted to ineffective assistance of counsel, were refuted by the record.

The Court has reviewed the Memorandum and Recommendation and finds it to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). Accordingly, the Court ACCEPTS the Magistrate Judge's Recommendation (Docket Entry No. 201) and DENIES and DISMISSES Lara's § 2255 Motion to Vacate (Docket Entry No. 198).

It is so ORDERED.

SIGNED this 20th day of September, 2010.



XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE